MOTION FILED
SEP 24 1999 99-132 (5)

In The
Supreme Court of the United States

JOANNE ARMSTRONG ALLNUTT,
Petitioner,

v.

ASSOCIATES LEASING, INCORPORATED;
MILLER & MILLER AUCTIONEERS, INCORPORATED;
URBAN N. ZINK CONTRACTORS, INCORPORATED;
MARK J. FRIEDMAN;
CHARLES J. MILLER, INCORPORATED,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Motion for Leave to Intervene as Party Plaintiff

Fred W. Allnutt, Sr.
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MOTION TO INTERVENE AS PARTY PLAINTIFF
AND TO
JOIN IN THE PETITION FOR CERTIORARI FILED
BY PETITIONER

COMES NOW, Fred W. Allnutt, *in propria persona,* and moves this Court for an Order to join Fred Allnutt as a necessary Party Plaintiff in this action, and to join Fred Allnutt in the Petition for Certiorari filed by Petitioner, and as reasons therefore states as follows:

1. Joanne Armstrong Allnutt and Fred Allnutt were married in Maryland in 1958, and are husband and wife.

2. Joanne Allnutt claims the property that is the subject of this action in tenancy by the entirety with Fred Allnutt.

3. On October 9, 1992, Fred Allnutt declared personal bankruptcy in the Bankruptcy Court for the District of Maryland, and his separate interest was sold in the course of those proceedings to the extent allowed by law:

> For all of the above reasons, the court concludes that the debtor's undivided interest in property which he held immediately before the commencement of the case as a tenant by the entirety with his nonbankrupt spouse, as that tenancy is presently constituted under Maryland law, is property of the estate in bankruptcy under the Code, that the interest is subject to administration under § 541(a)(1), and that the tenancy by the entirety is not severed by the filing of a petition under the Code. In re

> Ford, 3 B.R.559, 571 (1980), AFF'd. 638 F.2d 14 (4thCir. 1981).
>
> Under 522(b)(2)(B) it is not the tenancy by the entirety property itself which becomes a part of the estate, but only the interest which the debtor held in such property immediately before the commencement of the case. Id., at 575.

4. Under tenancy by the entirety, a bankruptcy trustee takes custody of a debtor's undivided interest consisting of the same unities, intact and unaltered, as they existed immediately prior to filing of the petition, and administers them under § 541(a)(1). In re Ford, *supra*.

5. In his Memorandum Opinion Imposing Sanctions Jointly Against Plaintiff [Joanne Allnutt] And Plaintiff's Counsel [Tracy Mulligan] In The Amount of $66,929.01, (that is to say the order currently on appeal before this Court) entered on March 20, 1998, the Honorable James F. Schneider, United States Bankruptcy Judge, found:

> "There is no doubt, based upon the record in this case, that the debtor [Fred W. Allnutt] is the sponsor of the instant lawsuit, as its true beneficiary and real party in interest." (Main Case No. 92-5-7401-JS, Adversary No. 96-5598-JS, Bankruptcy Docket #33, page 22, "Conclusion of law," ¶ 1.

6. Even though Fred Allnutt regards Judge Schneider's finding to be error, Judge Schneider has ruled that Fred Allnutt is a real party in interest.

7. Fred Allnutt is not asking for his interest back in his own right.

8. Fred Allnutt's interest as tenants by the entirety is *pro forma*.

WHEREFORE, Fred Allnutt requests to intervene *pro forma* as a tenant by the entirety and custodian for the purchasers.

Respectively submitted,

Fred W. Allnutt, Sr., *in propria persona*
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